

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

OWEN W. BARNABY,)
Plaintiff)

Vs.

MICHIGAN STATE GOVERNMENT) Case No. 1:22 -CV- 1146
HON. GRETCHEN WHITMER GOVERNOR OF MICHIGAN) Hon. Robert J. Jonker
HON. JENNIFER GRANHOMLM GOVERNOR OF MICHIGAN) Hon. Mag. Sally J. Berens
HON. RICK SNYDER GOVERNOR OF MICHIGAN)
KENDELL S. ASBENSON (P81747))
MICHIGAN ATTORNEY GENERAL DANA NESSEL)
Defendants)

AMENDED OR LEAVE TO AMEND
CIVIL COMPLAINT: 28 U.S.C. §1331; §1332(a);
42 U.S.C. §1983; First, Fourth, Fifth, Fourteenth
Amendments; Forgeries and Retaliation.

CITY OF BENTON HARBOR)
NILES CHARTER TOWNSHIP,)
BOARD OF TRUSTEES OF, NILES CHARTER TOWNSHIP)
BERRIEN COUNTY GOVERNMENT,)
BERRIEN COUNTY BOARD OF COMMISSIONERS)
BRET WITSKOWSKI TREASUSER OF, BERRIEN COUNTY)
BRET WITSKOWSKI INDIVIDUAL CAPACITY)
SHELLY WEICH TREASUSER OF, BERRIEN COUNTY)
LORI D. JARVIS REGISTRAR OF BERRIEN COUNTY)
LORA L. FREEHLING REGISTRAR OF BERRIEN COUNTY)
KATHLEEN CULBERSON NOTARY PUBLIC OF BERRIEN COUNTY)

ATTORNEY DONNA B. HOWARD)
ATTORNEY MCKINLEY R. ELLIOTT)
ATTORNEY JAMES MCGOVERN)
ATTORNEY JEFFREY R. HOLMSTROM)
HOLMSTROM LAW, PLC)
STATE BAR OF MICHIGAN, for the State of Michigan)
Defendants)

THE HONORABLE ELIZABETH T. CLEMENT, C.J)
THE HONORABLE BRIDGET M. Mc CORMACK C.J)
SUPREME COURT OF MICHIGAN, for the State of Michigan)

THE HONORABLE ELIZABETH L. GLEICHER, C.J)
THE HONORABLE CHRISPHER M. MURRAY, C.J)
MICHIGAN COURT OF APPEALS, for the State of Michigan)

THE HONORABLE ALFRED M. BUTZBAUGH, F.C.J)
THE HONORABLE MABEL J.MAYFIELD, C.J)
THE HONORABLE GARY J. BRUCE, C.J)
BERRIEN COUNTY TRIAL COURT, for the State of Michigan))

Defendants

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PLAINTIFF’S OPPOSITION TO,
BERRIEN COUNTY’S BRIEF IN OPPOSITION TO
PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

PLAINTIFF’S OPPOSITION TO,
PRELIMINARY STATEMENT

The case, Barnaby v Witkowski, No 1:14-CV-1279, 2018, WL 387961 (W.D. Mich. Jan. 12, 2018), 758 F App'x 431 (6th Cir 2018), was not and could not have been litigated on merits because of Defendants’ retaliations which deterred it from being litigated on its merits. As each time, Plaintiff sought Courts for redress, Defendants retaliated and intentionally misled Plaintiff, with intentionally false misrepresentation and omission of the material facts, they were obligated to disclose; and with reckless disregards for the truth, and concealment, and deterred Plaintiff from timely discovery in order to Amend-then-Complaint, that, they stole and defrauded Plaintiff of his real properties and is causing him, ‘Intentional infliction of emotional distress’, with ‘Forged Quit Claim Deed’, ‘Forged, Notice of Judgment of Foreclosure’, and ‘Forged Certificates of Forfeiture, Unauthorized Practice Law, intentional false pretense of unpaid properties taxes and deterred Complaint issues of claim from redress and prevented Plaintiff from getting monetary relief he warrants. Plaintiff’s Complaint now, ‘issues of claim’, Case No. 1:22 -CV- 1146, seeks adjudication on its merits, free from Defendants’ retaliations, with relief of, Declaratory Judgment, relief of, monetary damages for his properties, relief for punitive and relief for his emotional distress

The current, Case No. 1:22 -CV- 1146, is to once and for all litigate on merit. The Federal District Court’s exclusive jurisdiction in this case involve three areas: (1) There are Constitutional issues, (2) violations of federal laws, and (3) disputes between parties from

different states. And, Plaintiff's Complaint issues of claim, now, set the forth the sixteen Counts Defendants retaliations deterred, as follows: (1), Freedom to Redress From Retaliation; (2), "Right to a Fair Trial"; (3), Gross Negligence; (4), "Due Process"; (5), "Equal Protection of the Laws"; (6), "The Right to Government Services, and The Right to Use Public Facilities" (7), "Fraud"; (8), "Freedom of Movement and Freedom from Torture"; (9), "Damages to personal property", (10), Theft and Conversion of personal property; (11), "Intentional infliction of emotional distress and Emotional harm"; (12), "Unlawful Detention of Properties"; (13), "The right to gainful employment, and Safety from harassment"; (14), "Rights Given Plaintiff by the State of Michigan"; (15), "Whistleblowing"; (16), "The Right to Housing".

**PLAINTIFF'S OPPOSITION TO,
STATEMENT OF FACTS**

Simply put, Plaintiff spoke with Defendants' Attorney Thaddeus Hackworth, and he instructed and agreed with Plaintiff to serve him all Summons and Complaint on behalf of his same Clients. The Plaintiff sent Summons and Complaint by certified mail with restricted delivery and return receipt. A "green card" (PS Form 3811) to show proof of service. The "green card" was filed with the Court." Plaintiff submitted to the Court as proof of proper service of all named Defendants: 1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James Mcgovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski.

The primary reason Plaintiff called Defendants' Attorney Thaddeus Hackworth was to ascertain concurrence to serve him all Summons and Complaint on behalf of his same Clients. If for any reason Attorney Thaddeus Hackworth had stated that, he would not have received all served Summons and Complaint on his Clients behalf, Plaintiff would not have sent them to him. Furthermore, during the conversation Plaintiff asked Attorney Thaddeus Hackworth if he would receive Summons and Complaint on behalf of Defendant – Attorney Jefferey R. Holmstrom and Defendant – Holmdtrom Law Office and Attorney Thaddeus Hackworth said no, he will only receive Summons and Complaint for Defendant – Berrien County Government and its direct employees.

Defendants' Attorney Thaddeus Hackworth acknowledged that, he received form Plaintiff all Summons and Complaint by US Postal certified mail, with restricted Delivery and with return receipt and signed to receive them on December 9, 2022. However, Defendants' Attorney Thaddeus Hackworth, never opposed or objected to accepting service until January 9, 2023 because Plaintiff filed Default Judgment for their failure to file an answer to Plaintiff's Complaint or a Motion Under Rule 12.

Plaintiff's, choice of serving all Summons and Complaint by US Postal certified mail, with restricted Delivery and with return receipt was dictated by the standard procedural practice of the United States District Court for the Eastern District of Michigan, that, issued Summonses. Please see Service Handbook, file:///C:/Users/Admin/Desktop/Circuit-Brief%20of%202022/2022%20Eastern%20Distict%20Court/Service_Handbook.pdf

“How can the complaint be served? 2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green

card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.”

**PLAINTIFF’S OPPOSITION TO,
ARGUMENT**

First, Defendants’ willful and wanton misconducts have caused Plaintiff to lose all his same real properties, employment, loverhood, suffered homelessness, the untimely death of our son Matthew; Hardship of great pain and suffering; and emotional distress. As such when Plaintiff caller and spoke with Defendants’ Attorney Thaddeus Hackworth, the call was to ascertain concurrence to served him Summonses and Complaint on behalf of his same Clients. Again, if for any reason Attorney Thaddeus Hackworth states that he would not have receipted served Summonses and Complaint on his Client behalf Plaintiff would not have sent them to him. Defendants’ Attorney Thaddeus Hackworth acknowledged that he received form Plaintiff Summonses and Complaint by US Postal certified mail, with restricted Delivery and with return receipt and signed to received them on December 9, 2022. However, Defendants’ Attorney Thaddeus Hackworth, never have a need to oppose or object until January 9, 2023, because Plaintiff filed Default Judgment for their failure to file an answer to Plaintiff’s Complaint or a Motion Under Rule 12. Defendants are represented by Attorney Thaddeus Hackworth an Officer of the Court, who has received Summonses and Complaints, and does has a fiduciary duty to his clients, the court and perhaps even to the Plaintiff, in respect to the legal issued Summonses from the court.

Plaintiff’s, choice of serving Summonses and Complaint by US Postal certified mail, with restricted Delivery and with return receipt was dictates by the standard procedural practice of the United States District Court for the Eastern District of Michigan, that, issued Summonses.

Please see Service Handbook, file:///C:/Users/Admin/Desktop/Circuit-Brief%20of%202022/2022%20Eastern%20District%20Court/Service_Handbook.pdf

“How can the complaint be served? 2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.”

Moreover, all Defendants were properly served in the same manner, by US Postal certified mail, with restricted Delivery and with return receipt, inclusive of: Defendant – Kendell S. Asbenson, Assistant Attorney General of state of Michigan and Defendant – Dana Nessel Attorney General of State of Michigan, Defendants, the Hon. Jennifer Granholm former Governor, the Hon. Rick Snyder former Governor, and the Hon. Gretchen the current Governor of the State of Michigan and Michigan Supreme Court whom all file motion under Rule 12. However, all the Defendants listed in Plaintiff’s Motion for Default Judgment failed to file an answer to Plaintiff’s Complaint or a motion under Rule 12.

Further, Defendants and Attorney Thaddeus Hackworth, last dich effort, Under Fed. R. Civ. P. 55(b), states that,

Under Fed. R. Civ. P. 55(b), a judgment by default may be entered against a defendant who has failed to plead or otherwise defend against an action. To obtain a default judgment, a litigant must first obtain the clerk’s entry of default pursuant to Rule 55(a). See *Clanton v. Sam's Club*, No. 1:21-CV-53, 2021 WL 5496383, at *1 (W.D. Mich. Apr. 12, 2021). Once a default has been entered, a party may apply to the court for a default judgment. Fed. R. Civ. P. 55(b)(2).

Plaintiff is an In Pro Se Litigation, who the same Defendants’ willful and wanton misconducts have caused Plaintiff to lose all his same real properties, employment, loverhood, suffered homelessness, the untimely death of our son Matthew; Hardship of great pain and suffering; and emotional distress, called Defendants’ Thaddeus Hackworth and get his

permission to served him Summons and Complaint on behalf of his same Clients. Plaintiff filed Default Judgment and Application with Clerk for Default Judgment in good faith. (ECF No. 28), (ECF No. 31), (ECF No. 32). The United State Supreme Court state that the Courts should treat an In Pro Se Litigation, liberally .See, Erickson v. Pardus, 551 U.S. 89, 94 (2007).

Lastly, Plaintiff properly served Summonses and Complaint on the same Defendants, after Plaintiff has spoken with Defendants' Attorney Thaddeus Hackworth, and he instructed Plaintiff to served him Summons and Complaint on behalf of his same Clients and by US Postal certified mail, with restricted Delivery and with return receipt was dictates by the standard procedural practice of the United States District Court for the Eastern District of Michigan, Service Handbook, [file:///C:/Users/Admin/Desktop/Circuit-Brief%20of%202022/2022%20Eastern%20Distict%20Court/Service Handbook.pdf](file:///C:/Users/Admin/Desktop/Circuit-Brief%20of%202022/2022%20Eastern%20Distict%20Court/Service%20Handbook.pdf)

“How can the complaint be served? 2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.”

CONCLUSION

For the reasons articulated in PLAINTIFF’S OPPOSITION TO, BERRIEN COUNTY’S BRIEF IN OPPOSITION TO PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT, to Grant Plaintiff’s Motions for Default Judgment Filed Against Defendants and Application for Default Judgment (ECF No. 28), (ECF No. 31), (ECF No. 32) . especially that Defendants’ Attorney Thaddeus Hackworth agreed to and acknowledged that, he received form Plaintiff all Summons and Complaint by US Postal certified mail, with restricted Delivery and with return receipt and signed to receive them on December 9, 2022.

Respectfully Submitted,

Dated: January 9, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 9th day of January 2023, a duplicate original of Plaintiff's, "Motion's Brief for Default judgment", was filed with the Clerk of the Court, using the ECF System, which will provide electric notice to the parties of record, and I have email/mailed by U.S. Postal Service the relevant non-ECP participants.

Respectfully Submitted,

Dated: January 9, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.